

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DANNY KEITH MERTSOCK,	:	CIVIL ACTION NO. 4:15-CV-2363
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
BRADLEY BUCCHOLZ,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 14th day of January, 2016, upon consideration of the report (Doc. 5) of Chief Magistrate Judge Martin C. Carlson, recommending the court dismiss the civil rights complaint (Doc. 1) of *pro se* plaintiff Danny Keith Mertsock (“Mertsock”), for failure to state a claim for which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and 28 U.S.C. § 1915A(b)(1), (see Doc. 5), wherein Judge Carlson observes that the bulk of Mertsock’s claims are time-barred by the two-year statute of limitations governing civil rights claims, (see id. at 7-8), and it appearing that Mertsock did not object to the report, see FED. R. CIV. P. 72(b)(2), and the court noting that failure of a party to timely object to a magistrate judge’s conclusions “may result in forfeiture of *de novo* review at the district court level,” Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (citing Henderson v. Carlson, 812 F.2d 874, 878-79 (3d Cir. 1987)), but that, as a matter of good practice, a district court should “afford some level of review to dispositive legal issues raised by the report,” Henderson, 812 F.2d at 878; see also Taylor v. Comm’r of Soc. Sec., 83 F. Supp. 3d 625, 626 (M.D. Pa.

2015) (citing Univac Dental Co. v. Dentsply Intern., Inc., 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010)), in order to “satisfy itself that there is no clear error on the face of the record,” FED. R. CIV. P. 72(b), advisory committee notes, and, following an independent review of the record, the court in agreement with Judge Carlson that, to the extent Mertsock’s civil rights claims predate the filing of his complaint by more than two years, those claims are barred by the statute of limitations, and concluding that there is no clear error on the face of the record, it is hereby ORDERED that:

1. The report (Doc. 5) of Chief Magistrate Judge Carlson is ADOPTED.
2. Mertsock’s civil rights claims predating December of 2013 are DISMISSED without prejudice.
3. Mertsock is granted leave to amend his pleading within twenty (20) days of the date of this order, consistent with paragraph 2 above and the report (Doc. 5) of Chief Magistrate Judge Carlson. Any amended pleading filed pursuant to this paragraph shall be filed to the same docket number as the instant action, shall be titled “First Amended Complaint,” and shall be complete in all respects. It shall be a new pleading which stands by itself as an adequate complaint under the Federal Rules of Civil Procedure, without reference to the complaint (Doc. 1) hereinabove partially dismissed.
4. In the absence of a timely filed amended complaint, the case will proceed only on those claims that fall within the limitations period.
5. This matter is REMANDED to Chief Magistrate Judge Carlson for further pretrial management.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania